

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:95CR170</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER</b>
	)	
<b>DARIUS MOSS,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the Defendant's motion to reduce his sentence as a result of crack cocaine Amendment 706 to the sentencing guidelines (Filing No. 233) and the Defendant's pro se motion to review his sentence (Filing No. 240). The Court has also reviewed the government's response (Filing No. 242). The Defendant is represented by counsel. (Filing No. 237.)

The Defendant was found guilty after a jury trial of Counts I (conspiracy to distribute crack cocaine) and II (possession with intent to distribute crack cocaine) of the Indictment. His base offense level was 38, his total offense level was 42, his criminal history category was III, and his guideline range was 360 months to life imprisonment. He was sentenced to 360 months on Count I and 240 months (concurrent) on Count II.

Even with the change in offense level as a result of Amendment 706, the Defendant's base offense level is 36, his total offense level is 40, his criminal history category remains at III, and his guideline range remains at 360 months to life. 18 U.S.C. § 3582(c)(2) provides that a defendant's sentence may be lowered only when the action of the Sentencing Commission has resulted in a lowering of the defendant's sentencing guideline range. U.S.S.G. § 1B1.10(a)(2)(B) restates the same condition. In this case, because the change in offense level resulting from the application of Amendment 706

does not result in a lowering of the Defendant's offense level, his sentence may not be reduced. Therefore, the Defendant's motions are denied.

IT IS ORDERED:

1. The Defendant's motion to reduce his sentence as a result of crack cocaine Amendment 706 to the sentencing guidelines (Filing No. 233) is denied; and
2. The Defendant's pro se motion to review his sentence (Filing No. 240) is denied.

DATED this 21<sup>st</sup> day of July, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge